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We don't know who discovered water, but we're certain it wasn't a fish.

—John Culkin, S.J.

In the preceding article we presented the impressions of two groups of jurors regarding their experiences with videotaped trial presentations in California and Ohio. With only a few reservations, these jurors thought that videotaped trials were a good thing, or at least no worse than "live" trials. Their comments related to videotaping of civil suits; they were not as enthusiastic about the possible advent of videotaped trial presentations in criminal cases. Together with the strong endorsement given videotaped trial presentations by several legal commentators,[1] the responses of these jurors furnish positive impetus for the introduction or increased utilization of prerecorded videotape trials (PRVTT). Moreover, *experimental* evidence available in the literature of applied social psychology reinforces a conclusion that there is no difference between videotaped and live trial presentations.[2] Gerald Miller and his colleagues at Michigan State University designed and conducted an elaborate comparison of juror response to videotaped and live presentations. They concluded quite unequivocally that

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1. *E.g.*, Kornblum, *Videotape in Civil Cases*, 24 HASTINGS L.J. 9 (1972); McCrystal, *Videotape Trials: Relief for Our Congested Courts*, 49 DENVER L.J. 463 (1973) [hereinafter cited as McCrystal]; Morrill, *Enter—The Video Tape Trial*, 3 JOHN MARSH. J. PRAC. & PROC. 237 (1970).

2. Miller, Bender, Florence & Nicholson, *Real Versus Reel: What's the Verdict?*, 24:3 J. COMMUNICATION 99 (1974) [hereinafter cited as Miller].

"[o]n the basis of the results of this study and the impressions we gleaned while conducting the research, we find the videotaped trial format *not guilty* of any charges of detrimental effects [on] juror responses."[3] Here is the opinion of the social scientist nicely phrased to catch the lawyer's ear. In sum, all the lights appear green, and there seems no reason to delay realization of the obvious benefits of videotaped trial presentations.

Or almost no reason. In the rush to pick the legal fruits of videotape technology, it is possible that the unintended consequences of videotape utilization may be overlooked. Those persons advocating or responding to the use of videotape have been so close to the issue as, perhaps, to have lost sight of its potentially broader ramifications. Lest this sound like a plea by modern-day legal Luddites, we hasten to say that we do not know whether a widely increased use of PRVTT would have deleterious socio-legal consequences—but neither does anyone else. The most balanced presentations so far end on notes of cautious optimism.[4] David Doret's attempt to bring the literature of social psychology and communication theory to bear on the assessment of videotape's impact is a very creditable beginning to the job that needs to be done: to provide conceptual foundations for subsequent analysis of the relevant issues. In particular, these foundations must allow the legal and extra-legal factors to be seen both in detail and in perspective. Our goal here is to introduce some of the important problems that need consideration.

Media as Environments: The Substitutability Hypothesis

Underlying the position set forth by the proponents of PRVTT rests an unexamined assumption, namely that the use of the medium represents a simple substitution in the means of transmitting information. For example, Guy Kornblum states that "[v]ideotaped material is merely a new method of presenting evidence."[5] In this view, the essential features of evidence are assumed to remain invariant under changes in the means by which the evidence is presented. But this uncritical assumption about the direct substitutability of media is generally untenable. Whether it holds for PRVTT, or even for less com-

3. *Id.* at 109.

4. *E.g.*, Doret, *Trial by Videotape—Can Justice Be Seen To Be Done?*, 47 TEMP. L.Q. 228 (1974) [hereinafter cited as Doret]; Comment, *Videotape Trials: Legal and Practical Implications*, 9 COLUM. J.L. & SOC. PROB. 363 (1973) [hereinafter cited as *Practical Implications*]; Comment, *Video-Tape Trials: A Practical Evaluation and a Legal Analysis*, 26 STAN. L. REV. 619 (1974) [hereinafter cited as *Video-Tape Trials*].

5. Kornblum, *Videotape in Civil Cases*, 24 HASTINGS L.J. 9 (1972).

plete uses of videotape, must be demonstrated.

There are three ways in which the assumption may be inaccurate. First, *technical differences* between forms of presentation will sometimes result in differences in the saliency of details. For example, in the *Liggons v. Hanisko*[6] trial, Mrs. Liggons's poorly set, misshapen shinbone did not have as much visual impact on videotape as it did in person. This was due, in part, to a relatively low degree of visual contrast between the color of Mrs. Liggon's leg and the background against which the leg was videotaped during her testimony. With higher contrast, it is conceivable that the close-up shot of the leg would have more forcefully impressed the jury, perhaps to the point of returning a verdict in her favor. For present purposes, however, we will intentionally beg the question of how "impact" should be defined operationally. Determining the appropriate presentations of a shinbone is a concrete example of the general issue before us. That is to say, if a series of experiments showed that mock juries awarded more (or less) money when a plaintiff's injury was displayed on videotape instead of in person, which method should be accepted as the proper or more just presentation? Obviously the plaintiff's attorney would oppose the less effective presentation as much as the defense counsel would favor it. On what grounds ought a judge to rule on this issue?[7]

The second level of potential nonsubstitutability resides in the *inevitable editorial process* involved in translating from one medium to another, particularly when a change of scope is unavoidable. The producers of PRVTT are faced with difficulty in this regard. Because the camera becomes the juror's eye on the participants, it locks the juror's perspective in important ways: the jurors are no longer free to look around the setting of the trial and determine their own priorities for assessing what is relevant and what is not. Videotaping is, therefore, an unavoidably inscoping, manipulative translation of the live confrontational situation. The potential consequences of this narrowed focus could become, in a given case, grounds for dispute about fairness. For example, if a plaintiff's case is being weakened

6. Civil No. 637-707 (Super. Ct. San Francisco County, Ca., Sept. 19, 1973).

7. A dissenting opinion from an Eighth Circuit judge expressed similar concern: "[T]he videotape will tend to make the defendant look 'rougher' than he is in the flesh. The videotape camera will emphasize scars, blemishes, or a heavy beard, and it may crease shadows under the eyes or elsewhere on the face. . . . The videotape camera will pick out and magnify unpleasant mannerisms." Hendricks v. Swenson, 456 F.2d 503, 508 (8th Cir. 1972) (Heany, J., dissenting) (citation omitted). One needs to respond, in fairness to the medium, that the characteristics are not *inevitable* results of videotape, but rather likely results of careless videotaping.

by a witness's testimony in a live setting, the members of the jury, with varying degrees of psychological perspicacity and attention to detail, will evaluate the plaintiff's nonverbal responses to the damaging testimony. There is an element of autonomy in the jurors' observational options which would be removed during PRVTT, unless special care were taken to include some access to the plaintiff's response simultaneously with the presentation of the witnesses' testimony. To supply this information, however, would vitiate some of the advantages gained by the prerecording procedures, which include flexibility in the time and place of testimony collection.

Impeachment of a witness by his own earlier deposition presents related problems. In the live trial, impeachment may be accomplished by reading earlier testimony back or by playing a videotaped deposition. In either case, the jury may ascertain the effect of the presentation of earlier testimony on all aspects of the witness's demeanor. That opportunity, however, would not necessarily be afforded during a PRVTT.[8] Whether the witness will be on camera, viewing his own deposition, while the deposition is also on camera, is an editorial or directorial question that must be resolved in advance of the impeachment—otherwise the impact is lost. One commentator suggests the use of a split screen, so that the deposition and the witness's response to it appear contemporaneously.[9] There is little if any technical difficulty in providing this image to the jury, but the editorial decision raises additional issues. For example, if the split screen is used during impeachment, shall it be used throughout the PRVTT? If so, across what range should the dual images travel? Under what circumstances, if any, should lens changes be employed to present close-up shorts or other dynamic visual features? When may a particular editorial feature be objected to, and on what grounds will the dispute be decided?

Providing a split-screen close-up of a witness watching his own previously videotaped deposition without making his image available close-up at other times would seem unacceptable, for this *forces* the jury to pay attention to what may be only dubious cues to the truth or to the witness's character. What constitutes an adequate sample of a witness's physiognomy? In the live trial the jury's observational behavior is largely unrestricted. Obviously not a flawless system, this approach nevertheless avoids the necessity of hard editorial decisions on the parts of lawyers and judges who are not, after all, trained in experimental esthetics or the psychology of impression formation.

8. *Video-Tape Trials, supra* note 4, at 629.
9. *Id.*

One may argue, of course, that a reasoned and experimental approach to structuring the form of a PRVTT can solve these editorial problems as well as more technical difficulties. Professor Miller and his colleagues have experimented with a three-way split-screen presentation with static format on each of the three portions: an "establishing perspective" showing the bench, witness stand, and immediate foreground; a shot of the witness on the stand; and a shot of the questioning lawyer in front of the bench. While we will review the results of this experimental work in more detail below,[10] it is appropriate here to quote the conclusions in regard to split screen presentation:

> With but a single exception, we found no significant differences between role-playing jurors who viewed the split-screen and those who viewed full-screen presentation. The lone exception had to do with perceptions of attorney credibility: role-playing jurors who viewed the split-screen presentation rated the attorneys significantly more credible than jurors who watched the full-screen version of the trial. We believe these differences can be attributed to the greater nonverbal detail resulting from the close-up view of the attorneys on the split-screen system. Save for this one difference, however, the two systems produced comparable juror responses.[11]

It should be noted that this is a comparison between two forms of PRVTT. As quoted above, however, there were *no* significant differences between the split-screen videotape format and a live presentation of "the same trial." This suggests that editorial changes *within* the videotape medium can have larger immediate impact on juror behavior than at least some changes between media.[12] This provides all the more reason to exercise caution in formulating the rules by which editorial decisions shall be made for PRVTT. Videotape is not merely a new method of presenting evidence.

The third level at which the substitutability of PRVTT for live trials needs to be examined involves the question whether properties inherent in the video medium,[13] when combined with our cultural his-

10. See text accompanying notes 32-34 *infra.*

11. Miller, *supra* note 2, at 110.

12. The lack of difference should not encourage the conclusion that adoption of this three-way screen format (or any particular screen format) will "solve the problem" of translating without bias from live to videotaped presentations. This result has to do with televising a live courtroom trial, which is just what a PRVTT is *not.* The lack of difference demonstrated by the experiment is of more applicability to the use of videotape as a courtroom recording device than as a new mode of trial presentation.

13. These properties include but are not restricted to: impoverishment of the live field of observation (*e.g.*, loss of scope and resolution of visual and auditory information); interposition of at least one observer necessarily exercising an editorial function between the field of observation and the final audience; and temporal juxtapositions via editing that create implications not apparent in the live setting.

tory and expectations in regard to it, may produce undesirable unintended consequences in PRVTT.[14] Commentators are on uncertain intellectual ground in this area, for it is difficult to move with confidence or precision from the basic insights of McLuhan[15] and other theorists to predictions about specific circumstances. Much speculation concerning the social impact of television as a medium may not be empirically verifiable. What is needed initially is a conceptual framework which emphasizes the dynamic relationship between the structure and function of social institutions, and legal institutions in particular. Such a conceptual scheme would permit identification and analysis of the basic issues.

The Courts as an Outcome and an Embodiment of Justice

There are two sets of conditions which the videotape medium must satisfy if implementation is to succeed in the long run. One pertains to the functions of the courts. To the extent that courts, as presently constituted, serve useful symbolic or ritualistic functions that transcend the consequences of particular decisions, innovations like PRVTT should not be allowed to disrupt these functions without an explicit decision that this cost is outweighed by the benefits of the innovation. Presumably there are some functional costs that no technical benefits would outweigh. For example, if litigants generally believed that they could not receive a fair trial with PRVTT, or if the general public came to disrespect the courts because of a belief that justice could not be done with widespread use of PRVTT, then, even if the belief were false, the administrative and technical advantages of the innovation would have been gained at too high a cost. In any case, the persons advocating and implementing the innovation are not the same persons whose responses to it will determine its long-term effectiveness and value. This fact alone should signal caution, as widespread changes are contemplated.

The second set of relevant conditions pertains to the structure of the courts. Videotape procedures must be proven consistent with or an improvement upon the general organizational principles by which the courts operate. Much of the literature to date stresses structural improvements that videotape would bring to courtroom practice and

14. Doret's analysis of innate biasing effects of television includes consideration of the impact of *making* the PRVTT as well as of showing it. Doret, *supra* note 4, at 245. He also provides a discussion of the impact on the different participants in the final process. *Id.* at 245-52.

15. M. MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN (1964).

hence to the efficient administration of justice.[16] Because the primary proponents of PRVTT are directly engaged in the daily practice of trial law, they see the increased use of videotape as enabling them to do their jobs more effectively; they will be able to do more work in the same time or less. This argument for efficient structure is clear in Judge McCrystal's claim that he "never viewed the entire testimony and needed only fifteen minutes to rule on counsel's objections," in Ohio's first PRVTT.[17] From the judge's perspective, the freedom gained allows him the opportunity to do a better job—the court structure has been streamlined for more effective operation.

This approach to structural improvement is justifiable if it is assumed that courts function only as the vehicle for the just resolution of disputes. Seen from the inside perspective of the judge or trial lawyer, the machinery of the trial process is a means to the end of adjudication. As a result of long training and exposure, officers of the court are easily able to separate what the trial does from how the trial does it. This view of the means-end or structure-function relationship of courtroom and related legal activities, however, may not be uniformly shared by the lay public. For many persons the courts are not perceived as the machinery for achieving justice nor as a means to the fair settlement of controversies. Rather, they are perceived as the source or embodiment of justice. From this perspective, what courts do and how they do it are not so neatly separable. For legal professionals the trial is a *symptom* of a search for justice, *i.e.*, one aspect of a broader and deeper social process. The form of a trial is conceptually subordinated to its function. For the layman, however, the trial may be the *criterion* of justice, the definitive form for a fair resolution of a legal dispute. Changes in trial format, therefore, carry larger implications for those whose legal socialization has led to a conceptual equation between the structure and function of trials.

This observation is relevant to assessment not only of the possible impact of PRVTT, but also of the impact of other apparently procedural changes. Lawrence Tribe, in discussing the use of mathematical models in legal decisionmaking, has noted:

> Far from being either barren or obsolete, much of what goes on in the trial of a lawsuit—particularly in a criminal case—is partly ceremonial or ritualistic in this deeply positive sense, and partly educational as well; procedure can serve a vital role as conventionalized communication among a trial's participants, and as

16. *See generally* Doret, *supra* note 4, at 254-58.
17. McCrystal, *supra* note 1, at 469.

> something like a reminder to the community of the principles it holds important.[18]

Doret has brought this argument to bear on PRVTT and stressed the importance of in-person confrontations as meaningful symbols of a just process for the entire community:

> [I]t must be stressed that much of the power of the trial as a medium of social communication derives from the visibility of the different participants at a single, centralized forum, rather than at several, fragmented forums. It is ironic that for the very reason adjudication is convenienced by videotape that same adjudication becomes less visible and its communications easier to overlook.[19]

These arguments against technical innovations based on esthetic, symbolic, or ritualistic grounds are difficult to sustain—time runs against them. Progress means modernity, and conservative positions are often portrayed as fustiness. Thus, Judge McCrystal makes effective rhetorical use of the positive connotations of modern technology when he contrasts the slow evolution of courtroom practice with the rapid progress in the hardware and practice of medicine.[20] Doret makes a similar point in his concluding paragraph:

> One need only recall the curious phenomenon of trial by ordeal in a former age to appreciate that future ages might regard our live judicial assemblies in a similar way.[21]

He reminds us, however, that

> [t]he task for the present—after considering the compatibility of videotape with the "essential elements" of our judicial institutions —is to determine if its use comports with the deeply-felt values of *our* time and place.[22]

In sum, the primary concern is that, *even if* all the technical and editorial problems could be solved to general satisfaction, there may be further objections on normative grounds. For example, in response to the claim that PRVTT will markedly improve the appellate process,[23] Professor Maurice Rosenberg of Columbia Law School replied:

> Drastic changes in appellate court functioning should come about by deliberate design and knowingly, not as accidental by-products of technological advances. The technological tail should not wag the procedural dog.[24]

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18. Tribe, *Trial by Mathematics: Precision and Ritual in the Legal Process*, 84 HARV. L. REV. 1329, 1391-92 (1971).

19. Doret, *supra* note 4, at 258.

20. McCrystal, *supra* note 1, at 463.

21. Doret, *supra* note 4, at 268.

22. *Id.*

23. *See, e.g.*, McCrystal, *supra* note 1, at 478; *Video-Tape Trials, supra* note 4, at 638-39.

24. *Practical Implications, supra* note 4, at 372.

Essentially this concern rests on grounds apart from the efficacy of videotape. No matter how well it works, implementation must not be based on technical considerations alone. The canine metaphor suggests an inversion of values on the part of proponents of rapid implementation and perhaps an underestimation of the values served by current practice. In essence, however, the statement contains a plea for time rather than any definitive objection to PRVTT; and in general this is true of other nontechnical objections to PRVTT. There is concern that something important will be lost, but exactly what is difficult to specify and even harder to measure.[25] Current empirical techniques, while of some assistance, have yet to address the problem of changes in the socializing or educative functions of courts and trials. Jurors report positively on PRVTT and experiments show the absence of differences between PRVTT and a live trial; yet the metamessages[26] for all parties may still be quite different in the two contexts. Of course the message may be a salutary one in the case of PRVTT, but without specifications of exactly what the message is and what it ought to be, we cannot make that judgment.

The advent of PRVTT is not an isolated event in a technologically static societal milieu. On the contrary, the legal system has been relatively slow to adopt technology already widely used in other contexts. Nontechnical arguments against its widespread implementation must therefore be based on a demonstration that a loss attending transition to videotape warrants foregoing the technical advantages the medium provides.

Several commentators have pointed to the strengths of live trial presentations in comparison to PRVTT;[27] we will not repeat those observations here. Instead we will concentrate on some apparent *weaknesses* of live trials. What might appear as weaknesses may actually contain a portion of the desirable metamessage offered to jurors and spectators about the administration of justice.

25. For example, Doret provides an argument based on McLuhan that the television medium is inevitably "unsuited" for adversarial proceedings and oral examination. Doret, *supra* note 4, at 254-56. If this is strictly true, then PRVTT implementation would inevitably bring a decline in the importance of or value attached to the adversary system. However, the validity of the argument has only been asserted, not demonstrated. It is not clear to us, at any rate, that the videotape medium *cannot* capture what all would agree is an adequate flavor of trial under adversarial procedures.

26. "Metamessage" is a term denoting information available in the nonverbal or contextual aspects of situations. In the courtroom there are metamessages available in the elements of the setting (flags, uniformed personnel, the judge's elevated bench, etc.) as well as in the maintenance of decorous conduct.

27. *See, e.g.*, Doret, *supra* note 4, at 241-58; *Practical Implications, supra* note 4, at 381-86; *Video-Tape Trials, supra* note 4, at 626-28.

Objections and Interruptions

All commentators have agreed that a major advantage of PRVTT is the elimination of objectionable testimony and attorney misconduct. As one writer has said:

> [T]he [videotape] system enables a presentation of "pure" evidence —unmarred by objection, innuendo, or reaction—through the editing of remarks by lawyers and witnesses and the elimination of judge's comments altogether.[28]

In regard to objectionable testimony there are two issues to consider. First is the content of the testimony. There is good reason to believe that people remember what they are told to forget or ignore;[29] however, there is no direct evidence that actual juries regularly use the content of objectionable testimony in their deliberations. Nevertheless, the "cleansing" of the trial by prior videotape editing does seem a real advantage. The second issue, however, concerns the wider effect of objections on the jury and spectators. Objections and the striking of inadmissible evidence engender an appreciation by jury and spectators that not all information is legitimate for purposes of legal fact-finding, and that the judge presides to insure that the rules of fair play are followed. The sustaining of an objection, the reprimand of a witness or an attorney by the judge, and in general all the procedural work that PRVTT proponents would put backstage, instruct the laymen on the differences between everyday resolution of disputes and the formal procedures by which trial proceedings are governed. The metamessage—"Not everything goes here—we have a set of rules that prescribe proper conduct and they will be followed,"—may be lost in a seamlessly edited videotape shown in a courtroom from which the judge, attorneys, plaintiff, defendant, and witnesses are absent. Observation of confrontations stemming from errors may be an important instructional device for those unfamiliar with the judicial process.

A similar point may apply in the case of interruptions and delays of various sorts that would be eliminated or minimized by PRVTT. While aggravating and wasteful of precious court time, they nevertheless carry the metamessage: "We will not cut our procedures short for the sake of efficiency or expediency. This is the most deliberate process in our social structure, and we will not betray it—we have time to be fair." Of course this may be only one of many implicit messages in protracted proceedings. But the value of this metamessage and the

28. *Practical Implications, supra* note 4, at 371.

29. Sue, Smith & Caldwell, *Effects of Inadmissible Evidence on the Decisions of Simulated Jurors: A Moral Dilemma*, 3 J. APPLIED SOC. PSYCH. 345 (1973).

costs of foregoing it for a presentation that is pre-timed to the split second have yet to be ascertained.

Perhaps this line of thought seems only a curious variant on the concern that the "dignity of the court" is lost in PRVTT. To the extent, however, that some of the procedural weaknesses of live trials carry valuable educational, socializing metamessages for laymen, strong reason exists to maintain them in spite of, indeed because of, their technical inefficiency, at least to some degree.

The Roles of Empiricism in Forming PRVTT Policy

There are two obvious empirical approaches to assessing the impact of PRVTT. One is to ask jurors who have served in such trials how they liked it, and the other is to conduct experiments comparing live trials with PRVTTs. An example of the first approach is presented in our earlier article in this issue, while Gerald Miller and his colleagues have pursued the second course.[30] We have presented the bulk of our discussion about juror responses to PRVTTs in the preceding article and will not repeat it here. But one point can be made more easily as a result of the foregoing discussion: positive juror response to PRVTT does not constitute sufficient empirical grounds to conclude that exposure to PRVTT increases lay respect for the judicial process or deepens lay understanding of the values trials are designed to serve. Similarly, negative juror response would not necessarily mean that jurors are not learning valuable social lessons from their participation. There is a distinction between the immediate response of a participant to a process and the long-term implications of that participation for later behavior. Nevertheless, the general positivity expressed by the jurors surveyed suggests that increased use of PRVTT would encounter generally favorable public response.

We have previously touched upon the experimental work of Professor Miller and his students.[31] They have reported the results of a study in which one group of jurors[32] viewed a split-screen videotape presentation of a dramatized civil trial that had been seen live by another group of jurors. The same report presents data from another study in which the responses of two groups of mock jurors to two forms of PRVTT were compared. In both studies, the experiment-

30. Miller, *supra* note 2.

31. See text accompanying notes 9-11 *supra*.

32. The subjects in this part of the study were venirepersons in Michigan. For a discussion of some pitfalls in jury research, see Bermant, *The Logic of Simulation in Jury Research*, 1 CRIM. JUSTICE & BEHAVIOR 224, 224-33 (1974).

ers sought to determine if the different viewing conditions would affect five areas of juror response: attribution of negligence, size of awards among jurors finding for the plaintiff, perception of lawyer credibility, retention of trial-related information, and degree of juror motivation and interest during the trial. As mentioned above, they found no significant differences in these five areas between live and videotaped conditions, while the two videotape conditions differed in regard to estimates of lawyer credibility. We have already commented on the significance of this intra-medium effect.[33] Our purpose here is to point out certain features of the experiment that may affect its policy implications.

First, the criteria of good experimental design required that the PRVTT be a videotape of a live trial presentation. This is not, however, the format for PRVTT envisaged by its proponents. Ideally, witnesses would testify whenever and wherever it was convenient for them to do so: the doctor in his office, the patient in his hospital bed, the plaintiff at the site of the accident, and so on. Also, in the Miller experiment the judge was continually present on videotape split-screen; in actual PRVTT he probably would not appear. Hence, while the lack of differences between media appears to strengthen a conclusion that, at least on technical and editorial levels, videotape need do no harm, it cannot be said with confidence that this conclusion will obtain in the case of PRVTT as ultimately produced and utilized.

Second, again for sound scientific reasons, the experimenters included certain of the lawyer's objections and the judge's rulings on them. In actual PRVTT this material would be deleted. This factor, like the preceding one, tended to minimize the differences between the live and PRVTT formats.

Finally, the experimenters faced the problem of generating positive conclusions from null results. As they point out, "we recognize the hazards of basing our inferences on our failures to reject the null hypothesis."[34] The point, however, must not be overemphasized; at

33. See text accompanying note 12 *supra*.

34. Miller, *supra* note 2, at 110. The "null hypothesis" is the working assumption that differences observed between the outcomes of the conditions in an experiment (*e.g.*, responses of jurors in PRVTT as opposed to "live" conditions) are due to chance (*i.e.*, errors in sampling) rather than to a difference in the impacts of the conditions. Statistical procedures are designed to provide a measure of the confidence with which the null hypothesis can be rejected. Traditionally, the null hypothesis is rejected if and only if the probability of the observed results being due to chance is less than 0.05. Failure to reject the null hypothesis is not logically equivalent to proving it; inability to find a reliable difference is not proof that no difference exists. Hence, the Miller group is correct in providing this caveat.

this stage it is important to know that there are no large differences between live and videotaped presentations under the circumstances of this study.

Conclusions

We have attempted to set out what appear to be some of the main psychological and social dimensions attendant to PRVTT and the movement away from live trial presentations. In our opinion, the technical and editorial problems involved in PRVTT can be solved by collaboration among video experts, behavioral scientists, and legal professionals. In particular, screen format, lens usage, and related technical matters should be standardized to avoid unnecessary contention.

We are not so sanguine about the educational, socializing consequences of widespread PRVTT implementation. Some of the apparent weaknesses of live trials may contain some of their strengths as well. Whether courts relying heavily or totally on PRVTT could provide the relevant metacommunication is an open question. Much will depend on the presence and demeanor of the judge and attorneys during voir dire and swearing-in of the jurors. Although some detailed metamessages available in live trials will be lost in PRVTT, appropriate conduct of the officers of the court during their actual exposure to the jury and spectators can create socially useful metacommunication. Finally, we emphasize that our attention has been devoted to the complete PRVTT. There are several less comprehensive uses of videotape that present somewhat different opportunities and problems. Our remarks here are not intended to apply to them without qualification.